

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7651

Petition of Cellco Partnership, d/b/a Verizon)
Wireless, for a certificate of public good, pursuant)
to 30 V.S.A. § 248a, for the installation of a)
Tower-Mounted Amplifier System at sites)
located in Arlington, Bennington, Brattleboro,)
Dover, Ludlow, Shaftsbury, Sunderland and)
Vernon, Vermont)

Order entered: 8/27/2010

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") approves the application filed on July 22, 2010,¹ by Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless" or the "Petitioner"), pursuant to 30 V.S.A. § 248a, and the Board's Procedures Order, and grants the Petitioner a certificate of public good ("CPG") authorizing the installation of communications facilities located in the Towns of Arlington, Bennington, Brattleboro, Dover, Ludlow, Shaftsbury, Sunderland and Vernon, Vermont (the "Project").

II. BACKGROUND

This case involves a petition and prefiled testimony filed by the Petitioner on July 22, 2010, requesting that the Board issue a CPG, pursuant to 30 V.S.A. § 248a, authorizing the construction of the Project. Additionally, due to the limited nature of the Project, Petitioner

1. Verizon Wireless initially filed its application on July 12, 2010. However, review of the application by Board staff revealed that the application was incomplete. By memorandum dated July 16, 2010, the Board instructed Verizon Wireless to supplement its initial application to comply with the requirements of 30 V.S.A. § 248a and the Board's *Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*; Order issued August 14, 2009 ("Procedures Order"). On July 22, 2010, Verizon Wireless supplemented its petition and the Board deemed it complete and filed as of that date.

sought waivers of the following: (1) 45-day prefiling notice requirement;² (2) requirement to notify adjoining landowners that the application has been filed;³ (3) requirement to file detailed site plans;⁴ and, (4) requirement to file testimony addressing all substantive criteria applicable to projects reviewed under 30 V.S.A. § 248a.⁵ We explain our rulings on these waiver requests below in the Discussion and Conclusion section of this Order.

No comments or requests for hearing regarding the Project have been filed with the Board.

The Board has determined that the petition and prefiled testimony have effectively addressed the issues raised with respect to the applicable substantive criteria of 30 V.S.A. § 248a. Consequently, we find that the procedure authorized by § 248a is sufficient to satisfy the public interest, and no hearings are required.

III. FINDINGS

1. The Project involves modification of Verizon Wireless facilities at 13 sites through the installation of Tower Mounted Amplifiers ("TMAs") on existing towers, and Bias-T Units and Power Distribution Units in existing equipment shelters at each site. The modifications will improve "in-building" coverage within the existing coverage footprints, expand those coverage footprints by up to 10%, and decrease the extent of holes within the existing footprints. Lanpher pf. at 4.

2. The Project facilities are proposed to be located at the following sites: (1) Arlington North, located off Tory Lane, Arlington, Vermont; (2) Arlington South, located off Butternut Gutter Road, Arlington, Vermont; (3) Bennington Downtown, 215 South Street, Bennington, Vermont; (4) Brattleboro Downtown, 17 Belmont Avenue, Brattleboro, Vermont; (5) Brattleboro East, located off Buttonwood Hill Road, Brattleboro, Vermont; (6) Brattleboro South, located off

2. See 30 V.S.A. § 248a(e); Procedures Order at 5 (Notice Requirements).

3. See 30 V.S.A. § 248a(j)(2)(A); Procedures Order at 6 (Filing Requirements).

4. See Procedures Order at 6-8 (Filing Requirements, E.).

5. See 30 V.S.A. § 248a(c)(1); Procedures Order at 8 (Environmental Criteria, G.).

South Street, Brattleboro, Vermont; (7) Dover/Mount Snow, located off Route 100, Dover, Vermont; (8) Ludlow, located on Okemo Mountain, Ludlow, Vermont; (9) Shaftsbury North, located approximately 880' northeast of the intersection of Glastenbury Road and U.S. Route 7, Shaftsbury, Vermont; (10) Shaftsbury South, located off Buck Hill Road, Shaftsbury, Vermont; (11) Sunderland, located off North Road, 1,800' north of the intersection with Flynn Road, Sunderland, Vermont; (12) Vernon South, located off Lowery Road, Guilford, Vermont (at this site, the tower itself is across the town line in Vernon, Vermont); (13) Vernon West, located off Laurel Ledges Road, Vernon, Vermont. Lanpher pf. at 1-3; Dreher pf. at 1-3.

3. Six TMAs will be mounted on the existing tower at each of the 13 sites. Each TMA will measure no larger than 14" high x 11.3" wide x 5.9" deep, though individual units may be smaller. At all but the Bennington Downtown site, the TMAs will be mounted directly behind the existing antennas and therefore will be largely imperceptible. At five of the sites, the existing towers are of monopole construction and are designed to resemble pine trees with the antennas hidden behind artificial branches. Dreher pf. at 1-4; Lanpher pf. at 1-4.

4. At the Bennington Downtown site, the existing antennas are "flush-mounted" to the top of a 99-foot high lattice tower owned by the Town of Bennington and located behind the Downtown Welcome Center. Because the existing antennas at this site are "flush-mounted," the TMAs will be mounted directly below the antennas. Given the height of the existing tower and the size of the existing antennas, the TMAs will have little discernable visual impact. Dreher pf. at 4.

5. Each of the TMAs will be installed between the existing coaxial cable and the antennas using a 6-foot long jumper consisting of ½" foam cable. Additionally, a single Bias-T Unit, measuring 4.9" x 4.3" x 1.8", and a single Power Distribution Unit, measuring 1.69" x 7.72" x 4.6", will be installed in the existing equipment shelters at each site. Dreher pf. at 3-4; Lanpher pf. at 4.

6. None of the modifications will result in any increase in the height or width of the existing facilities, nor will there be any earth disturbance associated with the modifications. Finding Nos. 3-5, above; Lanpher pf. at 5.

7. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas. This finding is supported by findings 8 and 9, below.

8. The proposed installation of the facilities will not have an undue adverse effect on aesthetics when viewed in the overall context of the existing telecommunications towers and equipment located at each site. Dreher pf. at 4-5.

9. The proposed installation of the facilities will not have undue adverse impacts to rare or irreplaceable natural areas or historic sites within the vicinity of the existing sites where the Project will be located, because there will be no ground disturbance and because the new facilities will be barely discernable. Dreher pf. at 4-5.

IV. DISCUSSION & CONCLUSION

Pursuant to 30 V.S.A. § 248a(a):

Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities.

Pursuant to § 248a(j)(1), the Procedures Order defines a project of "limited size and scope" as a facility that:

(a) consists of an attachment to an existing structure that does not increase the height or width of the existing structure by more than twenty feet; or (b) does not exceed 135 feet in height and does not include road building or other earth disturbance exceeding 100 square feet, other than a temporary road or earth disturbance associated with construction or installation activities.

Further, pursuant to Section (L) of the Procedures Order, regarding projects of "limited size and scope:"

Unless the Board determines that an application raises a substantial issue, it shall issue a final determination on an application within 45 days of its filing

The proposed Project will consist of attachments to existing structures that will not increase the height or width of those structures, nor will there be any earth disturbance associated with Project installation at the existing sites.⁶ Therefore, all of the facilities qualify as facilities of "limited size and scope" as defined in the Board's Procedures Order governing the installation of wireless telecommunications facilities. The Procedures Order provides that the Board, in its review of facilities of "limited size and scope," conditionally waives all criteria under 30 V.S.A. § 248a(c)(1), with the exception of 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites, rare and irreplaceable natural areas).

Based upon all of the above evidence, the petition does not raise a significant issue with respect to the relevant substantive criteria of 30 V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

Additionally, we partially grant the request of Verizon Wireless and waive the 45-day prefiling notice requirement, the requirement to notify adjoining landowners that an application has been filed, and the requirement to file detailed site plans. Pursuant to 30 V.S.A. § 248a, the Board may waive by order the requirements of that section that it deems inapplicable to telecommunications facilities of limited size and scope.⁷ In its Procedures Order the Board waived some, but not all of the substantive criteria of section 248a. At the same time, we declined to generally waive any of the notice requirements of that section, instead establishing a case-by-case waiver process.⁸ We are only granting these three waivers to Verizon Wireless due to the extremely limited nature of the facilities that are included in the Project. They are small in size, are being installed on existing towers and in existing equipment sheds, and with the exception of the Downtown Bennington site, will be located out of sight behind existing

6. Dreher pf. at 4-5.

7. 30 V.S.A. § 248a(k).

8. Procedures Order at 5 (Purpose and Applicability) and 5-6 (Notice Requirements).

antennas. With respect to the waiver of the notice to landowners that the application has been filed, we find that the landowners could not reasonably be affected by the Project, and that notice to the landowners would constitute a significant administrative burden without a corresponding public benefit.⁹

It should be noted that the waivers of the 45-day advance notice requirement and the notice to landowners that an application has been filed are of special concern to us, because granting these waivers means that adjoining landowners will not receive any notice of the Project, and thus will not have the opportunity to comment on it prior to our decision. Were it not for the extremely limited nature of the Project, we would not be granting these two waivers. Future applicants for projects under section 248a should not read this Order as an indication of our willingness to dispense with these notice requirements. Applicants should keep in mind that the Board considers these notice requirements a fundamental part of this process, and will only grant waivers in the most compelling circumstances.

As to Petitioner's request that we waive all substantive criteria not otherwise waived in our Procedures Order, we find the request to be moot because Petitioner submitted testimony addressing potential Project impacts on aesthetics, historic sites and rare and irreplaceable natural areas. Accordingly, we decline to rule on the request.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the installation and operation of communications facilities at the locations specified in the above findings, by Celco Partnership, d/b/a Verizon Wireless, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

9. See 30 V.S.A. § 248a(j)(2)(B).

Dated at Montpelier, Vermont, this 27TH day August, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 27, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.